BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of Southern California Edison Company (U 338-E) For Approval of Its Forecast 2017 ERRA Proceeding Revenue Requirement.	A.16-05-001 (Filed May 2, 2016)

REPLY BRIEF OF THE ALLIANCE FOR RETAIL ENERGY MARKETS AND DIRECT ACCESS CUSTOMER COALITION REGARDING POWER CHARGE INDIFFERENCE AMOUNT VINTAGING ISSUES

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Pursuant to the directions contained in the September 26, 2016, Administrative Law Judge's Ruling Modifying Procedural Schedule of Administrative Law Judge Patricia B. Miles ("Ruling"), the Alliance for Retail Energy Markets ("AReM")[1] and the Direct Access Customer Coalition ("DACC")[2] submit this reply brief regarding power charge indifference amount vintaging issues.

I. SCE OVERREACHES IN ITS DESCRIPTION OF ASSETS SUBJECT TO PCIA

SCE lead argument in its opening brief is easily rebutted. It states that the "composition of SCE's generation portfolio underlying the pre-2009 PCIA customer vintages is made up exclusively of pre-2001 (*i.e.*, "legacy") Utility-Retained Generation ("URG").[3] The utility then avers that it "built this UOG (and contracted for the legacy QF and legacy inter-utility contracts) for *all* of its pre-restructuring customers at the time—including those customers who are now

[1] AReM is a California mutual benefit corporation formed by Electric Service Providers ("ESPs") that are active in California's Direct Access retail electric supply market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

[2] DACC is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

[3] This is said to include "SCE Utility-Owned Generation (UOG), legacy Qualifying Facility (QF) contracts, and legacy inter-utility contracts—resources that were procured prior to the energy market restructuring in 1995 and prior to the 2000-01 California Energy Crisis." SCE, at p. 2

"non-continuous" DA customers."[4] Thus it relies on the "on behalf of" criterion adopted in D.04-12-048 for resources procured many years *before* the "on behalf of" standard was adopted by the Commission. SCE attempts here to use a contemporary standard adopted for use in the PCIA methodology to bootstrap the conclusion that this pre-2001 procurement should continue to be covered by PCIA.

Notably, in a further bootstrapping exercise, SCE seeks to bolster its claim with a citation to D.02-11-002:

> The first Commission Decision holistically analyzing departing load cost responsibility issues, D.02-11-022, makes clear that non-continuous DA customers are responsible for the above-market costs associated with legacy URG. In that decision, the Commission stated: "The determination of a DA CRS [*i.e.*, PCIA] thus must take into account ***all*** relevant costs that would otherwise result in cost shifting from DA to bundled customers …[5]

Here SCE attempts in its bracketed note to equate PCIA with DA CRS. But this attempt should be rejected. As AReM and DACC noted in our opening brief, much, if not all, of the discussion of URG in D.02-11-002 deals with non-DWR generation, how it offsets higher DWR costs, and that the URG is not "off-limits" property of the bundled customer base.[6] D.02-11-002 therefore should be read as including non-DWR generation costs in the consideration of cost shifting (i.e., indifference) and not just the costs associated with DWR contracts. Perhaps most importantly, as pointed out in our opening brief, D.07-05-005 was issued over four years after D.02-11-022, which means that the latter decision cited as authority by PG&E, AReM and DACC represents the Commission's more recent thinking on the issue of whether the PCIA expires for pre-2009 Vintage customers after all DWR contracts have ended.

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[4] SCE, at p. 2 (emphasis in original).
[5] Id at p. 3.
[6] D.02-11-022 at p. 24.

Looked at from another perspective, SCE's claim also lacks credibility. At its heart, SCE is claiming that *all* of its pre-2001 resources should have its costs continue to be included in the PCIA. Presumably that would include its century-old hydroelectric facilities and its thirty-plus year old solar installations. SCE's website states, "We have been generating hydro power in the Sierra Nevada Mountains for 100+ years" and "We have generated solar power since the 1980s."[7] It is bootstrapping of the highest order to argue that century-old resources ought to be included in costs assessed to direct access customers when direct access did not even begin until 1998 and the Commission did not adopt the "on behalf of" standard until 2004. SCE cites no Commission or legal authority for this conclusion, which should thus be rejected.

II. SCE'S ATTEMPTS TO DIMINISH THE IMPORTANCE OF D.07-05-005 IS UNCONVINCING

Next, SCE attempts to portray Decision ("D.") 07-05-005 as being inconsequential. It does so by characterizing it as addressing only a "narrow issue" and complains that the decision only reiterates the point AReM and DACC have made in just "three sentences"[8] and complains further that "the DA Parties instead resort to reliance on a few sentences from D.07-05-005."[9] This is mere sophistry.

In fact, as stated in the Introduction to D.07-05-005, the original decision which PG&E sought to modify, "resolved various outstanding issues related to the cost responsibility surcharge (CRS) methodology application to non-bundled customers, including Direct Access (DA) and Municipal Departing Load (MDL) customers within the territories of the investor-

[7] *See* https://www.sce.com/wps/portal/home/about-us/environment/renewable-power.
[8] Id at p. 3.
[9] Id at p. 5.

owned utilities (IOUs)."[10] In its discussion of the PG&E petition, the Commission repeated three times that the PCIA for pre-2009 direct access customers would end once the utility's Department of Water Resources ("DWR") contracts expired. What would have been sufficient for SCE? Did the Commission need to state it five times, ten times? What matters, of course, is that the Commission *did* conclude that the PCIA should end for pre-2009 DA customers once the DWR contracts had ended. As SCE concedes that "it is undisputed that SCE no longer has DWR contracts in its portfolio,"[11] that is all that matters in the resolution of this issue.

III. SCE OVERSTATES THE IMPORTANCE OF THE 2013 SONGS-RELATED PCIA DECISION

SCE states that the Commission has subsequently rejected the DA Parties' attempt to exclude legacy UOG from the PCIA referring to D.13-10-052, a decision issued in A.12-08-001, SCE 2013 ERRA forecast proceeding, where the Commission considered whether SCE's largest legacy UOG resource should continue to be included in the PCIA. SCE first concedes that this decision "did not specifically address vintaging issues,"[12] and yet still attempts to rely on it for support.

As SCE acknowledges, this decision dealt in part with the narrow issue of whether the "10-year rule" was applicable to SONGS. This referred to the question raised by the Public Agency Coalition in that proceeding regarding whether SCE should recalculate its PCIA with the exclusion of resources that have received cost recovery for 10 years or more. SCE fails to mention that the decision specified that, "AReM/DACC agrees with PAC that such utility resources should not be included in the PCIA calculation 'ad infinitum,' but believes that this

[10] D.07-05-005, at p. 1
[11] SCE, at p. 2.
[12] Id at p. 6.

issue should be addressed in a consolidated fashion, and recommends inclusion in Petition (P.) 12-12-010." This is consequential because a fundamental issue here, as discussed below in Section V, is the importance of having this issue resolved in a statewide, consolidated fashion.

In fact, D.13-10-052 did not in the slightest way address the issue of pre-2009 vintages and the relevance of the expiration of DWR contracts. The decision is thus irrelevant to the topic of focus in this proceeding. The fact that this decision was issued after SCE's DWR contracts had expired is also irrelevant. A word search review of D.13-10-052 reveals that there is not a single reference to "DWR" or the DWR contracts anywhere in the decision. As the Commission neither discussed nor considered these contracts in the course of its analysis of the narrow "10-year rule," it cannot be considered to be a legitimate authority for resolving the issue in dispute in this proceeding.

IV. SCE'S CLAIM THAT THE DA PARTIES' ARGUMENTS ALSO VIOLATE THE CONSENSUS PROTOCOL IS INACCURATE

As part of SCE's argument that, "Commission should reject the DA Parties' out-of-context interpretation of D.07-05-005,"[13] SCE states that it and the DA Parties "have contractually and explicitly agreed that the portfolio calculations underlying the PCIA for all vintages should continue to include legacy UOG resources (specifically SONGS)."[14] AReM and DACC agree with SCE, at least, that context is all important. In fact, SCE's claim about the Consensus Protocol must also be considered in context. In both proceedings where SCE refers to the Protocol, the ERRA forecast proceedings of 2013 and 2015, the DWR contracts were in still

[13] Id at p. 8

[14] Id at p. 7.

place and thus the termination of PCIA for pre-2009 Vintage DA customers was not an issue.[15] Raising it at those times would have simply have been an unneeded distraction in cases that needed to be completed on a timely basis, as is always the situation in ERRA proceeding. In fact, if AReM/DACC had tried to do so, SCE would undoubtedly have objected that the issue was out of scope and irrelevant given the fact that the DWR contracts were still in effect. Thus, it is SCE who makes an out-of-context exaggerated claim with respect to the relevance of the Consensus Protocol

Furthermore, the Consensus Protocol explicitly states that its Calculations are illustrative only, as shown by this excerpt:

> Ratemaking Examples <u>are Illustrative Only</u> – Below, the Parties set forth four <u>hypothetical</u> scenarios discussing potential ways in which the Commission could adjust SONGS revenue requirements (i.e., costs recoverable in rates6) in the SONGS OII, and a general description of how the Protocol would implement the ratemaking associated with those scenarios.[16]

AReM and DACC took care to note in their joint 2013 ERRA brief that discussed the Consensus Protocol that:

> AReM and DACC wish to make it clear that their individual and collective agreement to the Protocol at this time <u>does not bar either or both of them from later proposing an alternative methodology</u> to deal with the issue addressed therein at a later date. <u>Subject to this caveat</u>, AReM and DACC request Commission approval of the Protocol in this docket and will make a similar request at a timely date in the SDG&E ERRA docket."[17]

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[15] Even though all of the DWR contracts that had been assigned to SCE for operation had expired at the end of 2011, DWR had a revenue requirement in place that was being shared among the three IOUs (*See*, D.13-12-004 at 15, as the final DWR contract ran through September 18, 2015). Thus, even though the contracts assigned to SCE for operation were expired, the trigger of the "DWR no longer buying power" had not been met. Furthermore, the Commission did not follow a "cost follows contract" allocation scheme, but instead assigned contracts so as to maximize their usefulness and shared all the contracts' collective excess costs among all three IOUs (*See,* D.05-06-060). Thus, the fact that SCE did not have any assigned DWR contracts is immaterial.

[16] Consensus Protocol, at p. 3 (emphasis added).

[17] January 27, 2014, AReM/DACC Opening Brief, at pp. 3-4 (emphasis added).

Put simply, AReM/DACC was aware of the pre-2009 PCIA issue for some time and reserved the right to bring it up at the right time in an appropriate proceeding. That right time is now and AReM/DACC have raised this issue in a procedurally proper manner. Agreement to the Consensus Protocol in the 2013 ERRA did not in any manner bar raising the issue at this time, as the Consensus Protocol in fact specifies.

V. SCE FAILS TO ADDRESS THE FACT THAT THE COMMISSION HAS ALREADY AUTHORIZED THE ELIMINATION OF THE PCIA FOR PRE-2009 CUSTOMERS IN PG&E'S SERVICE TERRITORY

Perhaps not surprisingly, SCE completely omits discussion in its opening brief about the fact that the Commission has already ruled that PG&E acted appropriately in its presentation of separate PCIAs for the pre-2009 Vintage and the post-2009 Vintage.[18] As noted in our opening brief, this differentiation was implicitly approved in Decision 14-05-024, which clearly stated that, "PG&E followed adopted PCIA and CAM methodologies..."[19] No party to A.15-06-001 opposed PG&E's ending the PCIA for pre-2009 Vintage DA customers. Significantly, the Commission did not reject PG&E's position or challenge elimination of the PCIA for pre-2009 Vintage DA customers.

It is important to have this issue resolved in a statewide, consolidated fashion. DA customers frequently have facilities in multiple utility service territories. It makes no sense for them to be told "you have to pay PCIA in SCE's service territory but you don't for PG&E." Logically, those affected customers would respond "Why?" This is a question for which there is no good answer, despite SCE's protestations.

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[18] *See*, A.14-05-024, PG&E 2015 Energy Resource Recovery Account and Generation Non-Bypassable Charges Forecast, Prepared Testimony of Donna L. Barry, pp. 9-8 and 9-9. May 30, 2014.

[19] D.14-05-024, at p 12 and p. 13

The Commission has opted for uniform statewide rules for direct access since its inception. For example, the "roadmap" decision, D.96-03-022, directed the utilities to prepare their proposed rules for retail competition.[20] Each utility responded with proposals that differed significantly from utility to utility, with the main similarity being their differing efforts to frustrate competition. A forerunner of AReM and DACC known as the Direct Access Alliance advocated strongly for a uniform statewide direct access tariff, which the Commission discussed and largely adopted in D.97-10-087. That decision noted:

> Our decision today is the result of a dynamic process regarding the direct access tariffs. Part of this process was to allow the parties an opportunity to develop a uniform tariff that could be used on a statewide basis.
> …
> Although we permit Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) to use its own tariffs on certain issues, we have attempted to move toward the use of a uniform direct access tariff for statewide use. Current system constraints prevent the use of such a statewide tariff at this time. However, in the near future, a uniform tariff is a distinct possibility. Such a tariff will eliminate inconsistent and differing rules among the utilities.[21]

Ultimately, the utilities' respective rules became virtually indistinguishable.[22] This is as it should be, since uniformity reduces confusion and is economically efficient. In summary, it is important for the Commission to provide consistent and uniform rules that are applicable to all customers, including those that have opted for direct access. The best way to accomplish this would be to direct that SCE should not charge the PCIA to pre-2009 Vintage customers, just as it already does for PG&E.

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[20] The utilities were directed to submit, "proposals addressing eligibility and phase-in schedules are now due on August 30, 1996. The direct access filings should address, at a minimum, eligibility criteria, phase-in schedule, customer aggregation requirements and options, and a preferred metering approach." D.96-03-022, at p. 22.

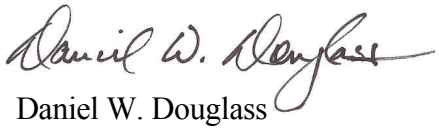
[21] D.97-10-087, at pp. 1-2.

[22] *See*, Rule 22 for SCE and PG&E and Rule 25 for SDG&E.

VI. CONCLUSION

AReM and DACC believe it to be clear that the PCIA is not applicable to pre-2009 Vintage customers. None of the arguments or decisions cited by SCE in its opening brief change the fact that the Commission has only on one occasion explicitly addressed the issue of the applicability of the PCIA to these customers. In that decision, D.07-05-005, the Commission clearly stated that "At the expiration of the DWR contract term, the applicability of the indifference requirement would also expire."[23] The Commission should act consistently with what it has already done in D.15-12-022, PG&E's 2016 ERRA Forecast proceeding, and provide statewide uniformity on this issue. SCE should be directed to cease its inconsistent application of the PCIA to pre-2009 Vintage customers.

Respectfully submitted,



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[23] D.07-05-005, at p. 27.